



BJR 12/29/00 9:55

3:00-CV-02586 HERTZ V. FRONTIER INS CO

1

CMP.

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FILED
00 DEC 28 PM 1:03

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff

BY:

B. Reed
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM F. HERTZ, II

Plaintiff,

V.

FRONTIER INSURANCE COMPANY,
NAC REINSURANCE CORPORATION,
MILLENNIUM TELEVISION NETWORK,
INC., and DOES 1 through 30,
inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

(1) ENFORCEMENT OF PAYMENT
BOND; AND (2) FRAUD.

DEMAND FOR JURY TRIAL

00 CV 2586 K (JAH)

Plaintiff WILLIAM F. HERTZ, II complains and alleges as follows:

JURISDICTION

1. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los Angeles, State of California.

2. Plaintiff is informed and believes and upon such information and belief alleges that defendant FRONTIER INSURANCE COMPANY, (hereinafter "FRONTIER") is, and at all times herein mentioned was, a corporation incorporated under the laws of the State of New York and authorized to engage and engaged in the surety insurance business in the State of California.

3. Plaintiff is informed and believes and upon such information and belief alleges that defendant NAC REINSURANCE CORPORATION, (hereinafter "NAC")

1 is, and at all times herein mentioned was, a corporation incorporated under the
2 laws of the State of New York and authorized to engage and engaged in the
3 surety insurance business in the State of California.

4 4. Plaintiff is informed and believes and upon such information and belief
5 alleges that defendant MILLENNIUM TELEVISION NETWORK, INC. (hereinafter
6 "MTN") is, and at all times herein mentioned was, a corporation incorporated
7 under the laws of the State of Delaware and authorized to engage and engaged
8 in business in the State of California.

9 5. Plaintiff is informed and believes and upon such information and belief
10 alleges that at all times herein mentioned, defendants and each of them were Co-
11 Sureties, principals, representatives, shareholders, agents, servants and/or
12 employees of the remaining defendants, and were at all times acting within the
13 purpose and scope of the aforesaid relationships, in concert and with the
14 authorization, consent and ratification of all the other defendants.

15 6. Plaintiff is ignorant of the true names and capacities of the defendants
16 sued herein as DOES I through 30, inclusive, and therefore sues such defendants
17 by such fictitious names. Plaintiff will amend this complaint to allege their true
18 names and capacities when the same have been ascertained. Plaintiff is
19 informed and believes and upon such information and belief alleges that each of
20 the fictitiously named defendants are sued as Co-Sureties, principals,
21 representatives, shareholders, agents, servants and/or employees and were, at
22 all times herein mentioned, acting within the purpose and scope of the aforesaid
23 relationships, in concert and with the authorization, consent and ratification of all
24 the other defendants.

25 7. The matter in controversy, exclusive of interest and costs, exceeds
26 the sum of \$75,000. The court has diversity jurisdiction pursuant to Title 28
27 U.S.C. section 1332(a)(1).
28

VENUE

8 Venue is proper in the Southern District of California under 28 USC section 1391(a)(3). This action is also a "related case" as three other cases previously filed in this district appear to arise out of the same or substantially identical transactions, happenings or events, involve substantially the same parties and likely would entail undue and unnecessary duplication of labor if heard by a different judge.

FIRST CAUSE OF ACTION
ENFORCEMENT OF PAYMENT BOND

9. Plaintiff incorporates by reference, as if set forth in full, allegations 1 through 8.

10. On or about May 20, 1999, FRONTIER and NAC as Surety/Co-Surety and MTN as principal, duly executed Payment Bond No. 143968 in the sum of \$10,000,000.00. (A true and correct copy of the Payment Bond is attached hereto as Exhibit "A" and incorporated herein by reference as if set forth in full).

11. At all times herein the Payment Bond was in full force and effect.

12. At all times herein the Payment Bond was intended to inure and did inure to the benefit of plaintiff, herein.

13. MTN hired plaintiff as Chief Operating Officer, General Counsel and Associate Producer in connection with a 24 hour global telecast of the Millennium New Year. The telecast was designed to originate from approximately 120 countries throughout the world, and included acclaimed musical artists such as N'SYNC, Aerosmith, Clint Black and Santana. In his role as Chief Operating Officer, General Counsel and Associate Producer, plaintiff was responsible for negotiating contracts and agreements pertaining to the Millennium telecast, administering all daily operations of the Millennium telecast, and legal oversight pertaining to the Millennium telecast.

14. In exchange for the foregoing services, work and labor, MTN promised

1 to pay plaintiff and plaintiff agreed to accept the sum of \$400,000.00 for one year,
2 plus back pay and reimbursement of all pre-approved expenses.

3 15. Plaintiff performed all services, work and labor required of him to be
4 performed by MTN.

5 16. MTN failed to pay plaintiff for all of the services, work and labor he
6 performed as Co-Executive Producer of the Millennium telecast.

7 17. As a direct and proximate result of MTN's failure to pay for all of
8 plaintiff's services, work and labor, FRONTIER and NAC became legally bound to
9 pay and are bound to pay plaintiff the sum of \$149,000, plus expenses and
10 costs.

11 18. In or about April, 2000, plaintiff orally presented to FRONTIER
and NAC his claim for payment under Payment Bond No. 143968.

12 19. FRONTIER and NAC breached the terms of Payment Bond No.
13 143968 by rejecting plaintiff's claim in its entirety.

14 SECOND CAUSE OF ACTION
15 FRAUD

16 20. Plaintiff incorporates by reference, as if set forth in full, allegations
17 1 through 8 and allegations 10-19.

18 21. During the negotiations for and at the time of the execution of
19 Payment Bond 143968, FRONTIER and NAC represented and positively asserted
20 that, should MTN fail to pay for any services, work or labor done on the
21 Millennium telecast, FRONTIER and NAC, as sureties/Co-sureties, would be
22 bound to pay and pay all such persons.

23 22. When made, the representations of FRONTIER and NAC, as set forth
24 above, were false and known by them to be false.

25 23. The representations of FRONTIER and NAC, as set forth above, were
26 made (a) with the intent that they would be repeated and acted upon; (b) under
27 such circumstances that FRONTIER and NAC reasonably anticipated that plaintiff
28 would hear and act upon them; and/or (c) with the intent of inducing plaintiff to

1 act upon them to his prejudice by performing services, work and labor on the
2 Millennium telecast.

3 24. Plaintiff justifiably relied upon the representations of FRONTIER and
4 NAC, and was induced thereby to perform services, work and labor on the
5 Millennium telecast.

6 25. As a direct and proximate result of the conduct of FRONTIER and
7 NAC, plaintiff sustained harm in an amount according to proof at time of trial.

8 26. As a further direct and proximate result of the conduct of FRONTIER
9 and NAC, plaintiff suffered anxiety, worry, mental and severe emotional distress,
10 all to his general damage in an amount to be determined at the time of trial.

11 27. The acts hereinabove alleged were done with a conscious disregard
12 of the rights and safety of plaintiff, and constitute malice, fraud and oppression,
13 thereby entitling plaintiff to recover punitive damages under Civil Code section
14 3294 in an amount to punish and deter the defendants and each of them.

15 28. The acts hereinabove alleged were done with a conscious disregard
16 of the rights and safety of plaintiff and constitute malice, fraud and oppression,
17 thereby entitling plaintiff to recover prejudgment interest under Civil Code Section
18 3291.

19 29. Plaintiff is informed and believes and thereon alleges that the conduct
20 of FRONTIER and NAC as described herein was undertaken by its officers and/or
21 managing agents. The aforesaid conduct was therefore undertaken on behalf of
22 FRONTIER and NAC. FRONTIER and NAC further had advance knowledge of the
23 actions and conduct of said individuals whose actions and conduct were ratified,
24 authorized and approved by managing agents.

25 WHEREFORE, plaintiff prays for judgment against defendants and each of
26 them as follows:

- 27 1. For special damages in the amount in excess of \$149,000;
28 2. For general damages;

2. For interest;
3. For costs of suit;
4. For reasonable attorney's fees;
5. For such other and further relief as the court may deem proper.

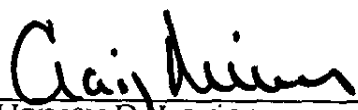
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: December 28, 2000

LEVINE, STEINBERG, MILLER & HUVER

By:



Harvey R. Levine
Craig A. Miller
Attorneys for Plaintiff

Payment Bond

FRONTIER INSURANCE COMPANY
195 Lake Louis Marie Road
ROCK HILL, NEW YORK 12775-8000
(A STOCK COMPANY)

NAC REINSURANCE CORPORATION
One Greenwich Plaza
GREENWICH, CONNECTICUT 06836
(A STOCK COMPANY)

PAYMENT BOND NO. 143968

KNOW ALL MEN BY THESE PRESENTS: that we, Millennium Television Network, Inc., a Delaware corporation, as Principal, and Frontier Insurance Company and NAC Reinsurance Corporation, a corporation of the State of New York, (hereinafter called Co-Surety), as Co-Surety are jointly and severally held and firmly bound, unto any and all persons, companies, or corporations who perform work or labor on, or furnish materials, provisions, provender or other supplies, or the use of implements or machinery used or to be used, in the event or services hereinafter mentioned, in the sum of Ten Million and no/100 Dollars (\$10,000,000.00), for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 20th day of May, 1999.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT, WHEREAS, the above bounden Principal has a Production Agreement for airing the 24-hour "Millennium World Broadcast" on or about December 31, 1999 (hereinafter called the Telecast).

NOW, THEREFORE, if the said Principal, shall fail to pay for any materials, provisions, provender or other supplies or for the use of implements or equipment, used or to be used, in, upon, for, or about, the production of said Telecast or for any work or labor done thereon of any kind, the said Co-Surety, Frontier Insurance Company and NAC Reinsurance Corporation, will pay the same amount not exceeding the sum named upon this bond, and this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under which the said contract, subcontract or purchase order was awarded to claimant for the Telecast as aforesaid by the Principal.

PROVIDED FURTHER, all suits at law or proceedings in equity to recover on this bond must be instituted prior to December 31, 2000.

PRINCIPAL:

MILLENNIUM TELEVISION NETWORK
INC., {SEAL}

By: Harold F. Leplunge
Title: CHIEF EXECUTIVE OFFICER
(CEO)

CO-SURETY:

FRONTIER INSURANCE COMPANY
{SEAL}

By: Brandie Conklin
Brandie Conklin, Attorney-in-Fact
CO-SURETY:
NAC REINSURANCE CORPORATION

By: Christine Cahill
Christine Cahill, Attorney-in-Fact

I (a) PLAINTIFFS

WILLIAM F. HERTZ, II

DEFENDANTS

FRONTIER INSURANCE COMPANY, NAC
REINSURANCE CORP. MILLENNIUM TELEVISION
NETWORK, INC. and DOES 1-30, inclusive(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES) CountyCOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CRAIG A. MILLER
LEVINE, STEINBERG, MILLER & HUVER
550 WEST C STREET, STE 1810
SAN DIEGO, CALIFORNIA 92101
(619) 231-9449ATTORNEYS (IF KNOWN)
CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

By:

00 CV 2586 K (JAH)
DEPUTY

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties
In Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX
(For Diversity Cases Only) FOR PLAINTIFF AND ONE FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|--|---------------------------------------|----------------------------|--|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place
of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place
of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a
Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ Appeal to District Judge from Magistrate Judgment

V. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 331,670

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NOVI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) ENFORCEMENT OF PAYMENT BOND; FRAUD.

VII. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

OTHER STATUTES	CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 28 USC 158
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 28 USC 157
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	PROPERTY RIGHTS
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 153 Recovery of Overpayment Of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 891 Agricultural Act	<input checked="" type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
	<input type="checkbox"/> 290 All Other Real Property			

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

CV71 (8/99)

CIVIL COVER SHEET - Continued on Reverse

Page 1 of 2

FOR OFFICE USE ONLY: ☐ Pro Hac Vice fee: ☐ paid ☐ not paid

Applying IFP

Judge

Mag. Judge

CCD-JS44